JUSTHEIM PETROLEUM COMPANY

IBLA 75-105 Decided February 13, 1975

Appeal from decision of the Utah State Office, Bureau of Land Management (BLM), suspending portions of oil and gas lease offers U-26475, U-26479, U-26485, U-26504, U-26505, and U-26508 for one year only.

Affirmed as modified.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Filing

   No law or regulation requires the mandatory rejection of an oil and gas lease offer merely because it is held in suspense for one year. The setting of a specific time limit on the suspension of an oil and gas offer is not a determination in the exercise of the Secretary's discretionary authority of whether or not to lease the lands for oil and gas.

APPEARANCES: Johnson, Parsons & Kruse of Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Offers to lease for oil and gas filed by the Justheim Petroleum Company (hereinafter referred to as Justheim) were assigned Serial Numbers U-26475, U-26479, U-26485, U-26504, U-26505, and U-26508. Portions of these offers were rejected for various reasons not material here. In the decision dated July 2, 1974, the Utah State Office, Bureau of Land Management, pointed out that since the remainder of the lands in the offers are in prior filed State of Utah selection applications and the State opposes the issuance of such leases, the offers as to those lands are being held in abeyance for one year. The decision further provide that if the state selections are still pending at that time the lease offers will be closed without further notice to the offeror.

Justheim in its appeal from the suspension of only one year asserts that the withholding of approval of the state selection applications is now the subject of a suit initiated in the United States District Court for Utah, Utah v. Morton, Civil No. C-74-64. Appellant submits that if the state selection applications are determined judicially to be improper, its lease offers should be approved. If, however, the state selection applications are determined to be proper, it agrees its lease offers must necessarily be rejected. It argues that the matter of the state selections may not be judicially finally resolved within a period of one year. In that event, it maintains, because of the express limitation on the suspension in the decision below, the priority of its offers could be lost. Appellant urges that the one year maximum on the suspension of its offers is arbitrary and should be abolished. It observes the decision below states that "it is not the policy of this office to suspend filings indefinitely," and further contends that no reason is given why the offers could not be suspended until the state selection applications are finally determined; including the exhaustion of all judicial appeals.

[1] The Department's regulation which provides for the acceptance of all applications for filing states that applications cannot be held pending possible future availability of the land or interests in land, when approval is prevented in five express circumstances. 43 CFR 2091.1. none of these is present in the instant cases. The segregative effect of the filing of a state selection application does not extend to filings under the Mineral Leasing Act, 43 CFR 2091.6-4. We find no law or regulation requiring mandatory rejection of an oil and gas offer merely because it is held in suspense for one year. The random setting of a specific time limit on the suspension of an oil and gas offer is not a determination in the exercise of the Secretary's discretionary authority of whether or not to lease the lands for oil and gas.

Accordingly, we agree with appellant that the suspension of the offers for a maximum of one year from the date of the decision below regardless of whether the state selection applications have been by that time ultimately judicially resolved is not sound. We also agree with appellant that the disposition of the subject offers as to the remaining lands is dependent upon the final disposition of the prior filed state selection applications for the same lands. The Texas Company, Patrick A. McKenna, A-26235 (October 8, 1951). Consequently, the offers will be suspended until such time as the state selection applications are judicially resolved, including the exhaustion of all appeal rights.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Anne Poindexter Lewis
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

JUDGE RITVO DISSENTING:

I would affirm the decision of the Utah State Office, BLM. The appellant has filed oil and gas lease offers which are in conflict with prior state selections filed by the State of Utah. The State selections are now involved in litigation, Utah v. Morton, District Court Utah filed March 3, 1974, Civil No. C-74-64. Appellant's offers, of course, cannot take precedence over the State selection application. The only issue is whether their offers should be rejected at once, suspended for a limited time, or suspended indefinitely. The State Office chose to suspend the offers for a one year period and then reject them if the litigation was not then terminated, presumably, adversely to the State. The majority finds this unsound. I do not agree.

To begin with, the Secretary or his delegate, may in his discretion, reject oil and gas lease offers when, among other reasons, he believes there is a sound administrative reason to do so. Placer Oil Company, 17 IBLA 292 (1974). Gas Producing Enterprises, Inc., 15 IBLA 266 (1974); Forest Oil Corporation, 15 IBLA 33 (1974); Georgette B. Lee, 10 IBLA 23 (1973). As these cases point out, it has been the long standing practice of the Department to reject lease offers where title to the land is in dispute and there is no prospect of resolution of the controversy in the foreseeable future.

The litigation involves the assertion by the State that it has obtained equitable title to the selected lands and is entitled to a transfer of the legal title, apparently without the necessity of the land being first classified pursuant to § 7 of the Taylor Grazing Act, 43 U.S.C. § 315(f); 43 CFR § 2400.0-3(a). Suit was brought without awaiting the result of a decision by the State Office and the regular appeal procedures. The State's position on the merits is contrary to that of the Department (State of California, 67 I.D. 85 (1960)).

While not a claim of present legal title, the State's position is much more akin to the dispute title situation that it is to the ordinary State selection application in which the only issue is classification of the selected lands.

The litigation in all likelihood, will be protracted, within the Department or before the Courts, or both. Therefore, the sound policy which leads the Department to reject oil and gas lease offers when there is little chance of a swift resolution of a title dispute is applicable here. Thus, the State Office would have been justified in rejecting the offers at once. That it delayed the rejection for a year, just in case the litigation terminated, is an illustration of its reasonableness, not its arbitrariness or capriciousness.

If at the end of a year the offers are rejected, the appellant will lose its priority if the land ever becomes available for oil and gas filing; but that is the result in all cases where the Department has refused to permit offers to remain pending until lengthy title problems are thrashed out.

Martin Ritvo
Administrative Judge